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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/975,968 | 10/15/2001 | Rikio Shiba | 862.C2245 | 1046 |

5514 7590 09/10/2003

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EXAMINER

FISCHER, ANDREW J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3627

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,968

Applicant(s)

SHIBA ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-4,41 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,41 and 54-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) g. 6) ☐ Other: _____

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DETAILED ACTION

Acknowledgments

1. The amendment filed August 17, 2003 (Paper No. 13) is acknowledged. Accordingly, claims 1-50 and 52-58 remain pending.
2. Claims 50-40, 42-49, 52, and 53 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 11.
3. The embodiments as described within Species A, B, and C (in Paper No. 9) are not patentably distinct. Therefore, the election of Species in Paper No. 9 was withdrawn in Paper No. 12.

Drawings

4. The corrected or substitute drawings were received on August 1, 2003 (Paper No. 14). These drawings are approved by the Examiner.

IDS

5. Applicants' comments on the Information Disclosure Statement ("IDS") filed November 13, 2002 (Paper No. 8) are acknowledged. Applicants seem to insist that particular patents be listed twice on any patent that issues from this application. Since Applicants always remain the masters of their own patent application, the Examiner has included an initialed copy of the IDS.

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Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4, 41, and 54-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 1, the phrase “information for displaying which contains fields” is unclear. “A claim must be read in accordance with the precepts of English grammar.” *In re Hyatt*, 708 F.2d 712, 714, 218 USPQ 195, 197 (Fed. Cir. 1983). The claimed phrase does not make grammatically sense. Because Applicants use the term “which,” the Examiner grammatically interprets the phrase “which contains fields” as a nonrestrictive clause. Appropriate correction is required.

b. Also in claim 1, it is unclear as to which noun the phrase “for ordering a product” is in reference to. *Hyatt*, 708 F.2d at 714, 218 USPQ at 197. On one hand, it could be in reference to the “information” while on the other hand it could be in reference to “fields.” Appropriate correction is required.

c. Regarding claim 3, the conditional phrase “if the user has specified the return of the use product” makes the scope of the claim unclear since the scope of the claim is indeterminate if the condition does not occur. Applicants are reminded of the USPTO’s policy on conditional claim language. Specifically, “[l]anguage that suggest or makes optional but does not

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require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]” MPEP §2106 II C.

d. Claim 41 recites the limitation “read status information” in line 12. There is insufficient antecedent basis for this limitation in the claim. Although claim 41 recites “reading status information” with the step of “reading” and the “status information” as being what is read, this is hardly “the read status information” recited. If only status information is desired, the Examiner suggests deleting “read” from line 12 in claim 41.

e. In claim 58, the phrase “based upon the return of two times and more” is indefinite. What is returned two time or more? A single product? The same product twice? 2 shipments of products? Grammatically, the claim recites that the integer “2” is returned. Applicants are reminded that “semantic indefiniteness of claims is not rendered unobjectionable merely because it *could* have been corrected. [Emphasis in original.]” *Allen Engineering Corp. v. Bartell Industries Inc.*, 299 F.3d 1336, 1349, 63 USPQ2d 1769, 1776 (Fed. Cir. 2002) (citations and quotations omitted).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

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(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claims 1-4, 41, and 54-58, as understood by the Examiner, are rejected under 35 U.S.C.

102(b) as being anticipated by Junger (U.S. 6,085,172) ("Junger '172"). Junger '172 discloses sending information (via the Internet from the regional return center to the manufacturer and back); the information includes status information (the return center operator checks that status of a return authorization request: e.g. pending, approved, rejected); the manufacturer's computer receives logging in information from the terminal (the return center's terminal); reading status information from a database (inherent since status is recorded in the database) in accordance with the logged-in information (the regional return center has access to their information only if their own RAs are submitted under its username and password) and updating the status information based upon a notice of completion (status information also includes a monetary value (*i.e.* credit) value of the returned items since credit is only received after the return process is completed); supplying ordering information to the terminal (the returned product is scanned with e.g. a bar code to get serial number or SKU; column 4, ~ lines 55-63); calculating an incentive point (a monetary value) in accordance with the status information (inherent since the credit value of all returned products is credited to the return center); planning a plan of the return of a used product (see the entire reference); the product includes a consumption used by an image formatting

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apparatus (a cable used by a VCR); and reading result information from a database (the batch information) where the result information is based upon return information of two or more products (two or more products are needed for a 'bach' process).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 3, as understood by the Examiner, is alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Junger '172.¹ Junger '172 discloses as discussed above and also directly discloses in an alternative embodiment deducting the monetary value of authorized returns from an existing or future vendor invoices (column 8, ~ lines 41-44). While Junger '172 does not *directly* disclose returning the product when an ordered product is delivered, nothing in Junger '172 would lend one of ordinary skill in the art to believe that Junger '172 does not already inherently perform this feature. It is therefore the Examiner principle position that claim 3 is anticipated because of the inherencies noted above.

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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However, if not inherent, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Junger '172 to include returning a product when an ordered product is delivered. Such a modification would have improved efficiency of the ordering and return system since transportation devices such as trains, planes, and vehicles would have make a return trip regardless of their payload. In this way, the use of transportation devices could be maximized since a particular transportation device would be carrying some type of payload (either returned or new goods) while traveling either to or from the place of manufacture making the overall operations more efficient.

12. Functional recitations using the word “for” (e.g. “for displaying which contains fields for ordering a product and for specifying the return of a product” as recited in claim 1) have been given less patentable weight² because they fail to add any steps and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim.).

² See e.g. *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

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If Applicants desire the intended use language to have greater patentable weight, the Examiner recommends Applicants actually recite a method step: e.g. --ordering product information-- instead of “for ordering” and --displaying information-- instead of “for displaying.”

13. The Examiner concludes that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,³ the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements.⁴ Third, after receiving express notice in the previous Office Action⁵ of the Examiner’s position that lexicography is *not* invoked, Applicants have not pointed out the “supposed errors” in the Examiner’s position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants have not argued lexicography

³ See the Examiner’s previous Office Action mailed March 26, 2003, Paper No. 12, Paragraph No. 14.

⁴ “In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent’s scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]” *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

⁵ See again the Examiner’s previous Office Action, Paper No. 12, Paragraph No. 14.

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is invoked). Finally and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation⁶ to be his own lexicographer.⁷ Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process, the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their "broadest reasonable interpretation" *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁸ The Examiner now relies heavily and extensively on this interpretation.⁹ Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

⁶ *Id.*

⁷ The Examiner's requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner's requirements were simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed August 2, 2003).

⁸ See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) ("In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification."); MPEP §§ 2111 and 2111.01; and *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc).

⁹ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]"

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14. To the extent that the Examiner's interpretations are in dispute with Applicants' interpretations, the Examiner hereby adopts the following definitions during ex parte examination—under the broadest reasonable interpretation standard—in all his claim interpretations.¹⁰ Moreover, the following list is provided in accordance with *In re Morris* and is not exhaustive in any way.

a. **Database** “A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.¹¹

b. **Internet** “The worldwide collection of networks and gateways that use the TCP/IP suite of protocols to communicate with one another. At the heart of the Internet is a backbone of high-speed data communication lines between major nodes or host computers, consisting of thousands of commercial, government, educational, and other computer systems, that route data and messages.” *Id.*

¹⁰ Some additional definitions are provided to help interpret words found in the definitions of claim terms. *agf*

¹¹ Based upon the Applicants' disclosure, the entire art of record, and the knowledge of one of ordinary skill in this art, the Examiner's finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” used to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled “New Terminology”.

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c. **Network**: “A group of computers and associated network devices that are connected by communications facilities.” *Id.*

d. **Consumption** “2 : the act or process of consuming” Merriam-Webster’s Collegiate Dictionary, 10th Edition, Merriam-Webster Inc., Springfield, M.A., 1997. **Consuming** “2 : to utilize economic goods” *Id.*

e. **Information** “ 2 a . . . (3): FACTS, DATA . . . ” **Data** “Plural of the Latin *datum*, meaning an item of information. In practice, data is often used for the singular as well as plural the form of the noun.” *Computer Dictionary*, supra.

f. **Product** “2 a : something produced” *Id.*

g. **Relate** “2: to show or establish logical connection” *Id.*

h. **Used** “2: that has endured use;” *Id.*

15. It is the Examiner’s factual determination that all limitations in claims 1-4, 41, and 54-58 have been considered and are either disclosed or inherent in the references as discussed above.

Furthermore, the inherent features are established by a preponderance of the evidence. *In re Epstein*, 32 F.3d 1559, 1564, 31 USPQ2d 1817, 1820 (Fed. Cir. 1994) (“Preponderance of the evidence is the standard that must be met by the PTO in making rejections.” (citations and quotations omitted)). The preceding discussion in this paragraph regarding the standard for claim rejections applies to all examined claims currently pending.

16. It is the Examiner’s position that the claims do not contain any product-by-process limitations.

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Response to Arguments

17. Applicants' arguments with respect to the pending claims have been fully considered but are moot in view of the new grounds of rejection.

18. Regarding the §101 rejection, Applicants have amended the claims yet still have not expressly stated which of the four (4) statutory classes the claims in question are drawn upon. It is the Examiner's position that all examined claims currently pending are process claims.

Conclusion

19. Applicants' amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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20. The following two (2) citations to the Manual of Patent Examining Procedure (“MPEP”) apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the MPEP 8th Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

21. In accordance with *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work Millennium Ed. by Ron White; How Networks Work, Millennium Ed. by Frank J. Derfler et. al.; and How the Internet Works, Millennium Ed. by Preston Gralla are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these three references are directed towards beginners (see *e.g.* “User Level: Beginning . . .”), because of the references’ basic content (which is self-evident upon review of the references), and after further review of both the intrinsic evidence of record and the entire art now of record, the Examiner finds that these three references are primarily directed towards those of *low* skill in this art. Because these three references are directed towards those of low skill in this art, the Examiner finds that one of *ordinary* skill in this art must—at the very least—be aware of the knowledge and information contained within these three references.

22. Suggestions or examples of claim language provided by the Examiner in this Office Action are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is “allowed,” exemplary claim language provided by the Examiner to overcome a particular rejection or to

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change claim interpretation has *not been addressed* with respect to other aspects of patentability (e.g. §101 patentable subject matter, §112 1st paragraph written description and enablement, §112 2nd paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment that incorporates an Examiner suggestion or example or simply changes claim interpretation will still require further consideration and/or search and a patentability determination as noted above.

23. Because this application is now final, Applicants are reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that the claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (e.g. §101 patentable subject matter, §112 1st paragraph written description and enablement, §112 2nd paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

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24. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicants for their "Remarks" (Paper No. 13 beginning on page 6) traversing the Examiner's positions on various points. If Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied¹², the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) *in their next properly filed response*. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have *any* questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292.


Andrew J. Fischer
Patent Examiner

AJF
September 2, 2003

¹² E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.